

The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEVEN FLOYD, JOLENE FURDEK, and
JONATHAN RYAN, on behalf of themselves
and all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware corporation,
and APPLE INC., a California corporation,

Defendants.

Case No. 2:22-cv-01599-KKE

**MOTION FOR ATTORNEYS' FEES
AND COSTS**

NOTE ON MOTION CALENDAR:
May 23, 2025

Counsel for Defendants Amazon.com, Inc. ("Amazon") and Apple Inc. ("Apple") jointly submit this request for attorneys' fees and costs incurred in connection with a Motion to Compel and Motion for Sanctions ("Motions") to obtain discovery from Plaintiff Steven Floyd.

The parties have spent significant time over the course of months litigating issues caused by Plaintiffs' Counsel's conduct in connection with the withdrawal of Plaintiff Steven Floyd as a class representative. At the Court's direction in its April 10, 2025, Order (Dkt. 203), counsel for Defendants Amazon and Apple jointly submit this request for attorneys' fees and costs incurred in connection with the Motions to obtain discovery from Mr. Floyd.

Background

Defendants first issued discovery to Mr. Floyd in September 2023, Dkt. 203 at 2, when Mr. Floyd was the sole named plaintiff in the case. In May 2024, Apple moved to compel Mr. Floyd to respond to discovery and testify at a deposition. Dkt. 104. In August 2024, the Court granted the motion to compel, holding that “the discovery Apple seeks is relevant to its defenses as well as to some of the issues related to class certification even if Floyd will not be a named plaintiff at that stage.” Dkt. 132 at 6. Despite the Court’s order, Mr. Floyd failed to provide discovery and did not appear for a deposition.

In October 2024, Amazon and Apple moved for discovery sanctions in the form of an order to show cause why Mr. Floyd should not be held in contempt for failing to respond to discovery. Dkt. 152. In November 2024, the Court denied without prejudice the motion for sanctions and ordered Mr. Floyd’s counsel to produce all non-privileged communications with Mr. Floyd and a privilege log. Based upon this material, Defendants reactivated their motion for discovery sanctions and the Court conducted an *in camera* review of the communications between Mr. Floyd and Hagens Berman.

Based upon this *in camera* review, the Court found that, “Floyd informed his counsel in January 2024 that he did not want to continue participating in this litigation, specifically because he did not wish to provide the information necessary to respond to discovery requests.” Dkt. 203 at 6. And later on, “Floyd’s August 28, 2024 email to his counsel was pointedly hostile, and clearly indicated that he would not willingly participate in the case after all. Yet Floyd’s counsel told the Court the next day that Floyd simply needed more time to comply with discovery and secured an extension of the discovery deadline on that basis.” Dkt. 203 at 7. Thus, the Court found that “counsel’s descriptions of this episode are lacking in candor” and that “counsel’s characterizations of Floyd’s situation over the past fourteen months have not reflected his reality.” *Id.* The Court found that “Floyd’s counsel’s conduct in handling this discovery dispute has needlessly prolonged this litigation and required considerable judicial resources, as well as time and effort on the part of Defendants, and the dispute remains unresolved even now.” *Id.*

In light of this, “the Court [found] that, instead of imposing discovery sanctions on Floyd himself, Defendants are entitled to request an award of attorney’s fees and expenses, to be paid by Floyd’s counsel, incurred in bringing the motion to compel and the motion for discovery sanctions” to be filed on or before May 2, 2025. Dkt. No. 203 at 7. Accordingly, Amazon and Apple respectfully submit this motion for attorneys’ fees and costs.

Legal Standard

In the Ninth Circuit, courts calculate awards for attorneys’ fees using the “lodestar method,” which is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). This Court determines the reasonable hourly rate by looking to the rate prevailing in the Western District of Washington ‘for similar work performed by attorneys of comparable skill, experience, and reputation.’” *Amazon.com, Inc. v. Wong*, 2023 WL 5206373, at *1 (W.D. Wash. Aug. 14, 2023) (quoting *Chalmers v. City of L.A.*, 796 F.2d 1205, 1210-11 (9th Cir. 1986)).

Amazon’s Request

Amazon has submitted declarations from the three firms representing it in this case: Sidley Austin, Redgrave, and Davis Wright Tremaine.¹² These firms worked together on the two motions at issue. The declarations submitted by counsel at each of these firms identifies the hours incurred on these two motions, based upon a review of each firm’s contemporaneous time records. *See* Mundel Decl. ¶¶ 2, 4; Goldmark Decl. ¶ 3; Dugan Decl. ¶ 6. *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (fee petitions should include “evidence supporting the hours worked and the rates claimed.”).

In connection with this fee request, Amazon is seeking hourly rates based upon Davis Wright Tremaine’s standard rates in this district, Goldmark Decl. ¶¶ 6-8, even though standard

¹ Sidley Austin serves as national counsel. Redgrave serves as discovery counsel. Davis Wright Tremaine serves as Washington counsel.

rates at Sidley Austin and Redgrave are significantly higher than these amounts. Mundel Decl. ¶ 8(a)-(b); Dugan Decl. ¶ 8.³ Courts in this district have accepted Davis Wright Tremaine's rates as reasonable and appropriate in a wide variety of cases. *See, e.g., Amazon.com, Inc. v. Wong*, 2022 WL 1092518, at *2 (W.D. Wash. 2022) (finding DWT's standard rates reasonable, including \$785 per hour for partners, and \$535 per hour for DWT associates, because such rates are "comparable to those prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation") (internal quotation marks omitted); *Amazon.com, Inc. v. Trey King*, No. 22-2-12548-9 SEA (Wash. Super. Ct. Mar. 12, 2024) (unpublished) (finding DWT's \$129,443.00 in attorneys' fees reasonable); *Amazon.com, Inc. v. Bishal*, No. 22-2-12548-9 SEA (Wash Super. Ct. Mar. 12, 2024) (unpublished) (finding DWT's \$78,944.00 in attorneys' fees reasonable); *Ebbeler v. Andrews*, 21 Wn. App. 2d 1005, 2022 WL 594121, at *15 (unpublished) (affirming \$264,372 fee award and trial court's finding that DWT's rates were "objectively reasonable in light of the experience of counsel representing Defendant in this locale"); *denied*, 199 Wn.2d 1024 (2022); *Buich v. Tadich Grill Dev. Co.*, 11 Wash.App.2d 1063, 2020 WL 60310, at *8-9 (2020) (unpublished) (upholding lodestar award based on DWT's standard rates because "[w]here attorneys have an established rate for billing clients, that rate will likely be the reasonable rate"). The rates requested also align with the rates of similarly highly-qualified West Coast counsel. *See, e.g., Washburn v. Porsche Cars N. Am., Inc.*, 2025 WL 1017983, at *9 (W.D. Wash. Apr. 4, 2025) (approving hourly rates up to \$1250 per hour for partner in a class action case); *Dunne v. Quantum Residential Inc.*, 2025 WL 896741, at *1-2 (W.D. Wash. Mar. 24, 2025) (approving hourly rates up to \$975 per hour for partners in a class action case); *Stanikzy v. Progressive Direct Ins. Co.*, 2022 WL 1801671, at *6 (W.D. Wash. June 2, 2022), *aff'd*, 2023 WL 4837875 (9th Cir. July 28, 2023) (approving hourly rate of \$1,000 per hour in 2022 for partner in a class action case).

³ Counsel for Amazon operate on alternative fee arrangements, but the lodestar method is still appropriate to calculate attorneys' fees. *Straight Path IP Group, Inc. v. Cisco Systems, Inc.*, 2020 WL 5522993, at *4 (N.D. Cal. Mar. 4, 2020).

Counsel for Amazon exercised billing judgment in reviewing its records and is only seeking fees for time spent directly on the two Motions, even though the issues relating to the Motions were intertwined with work on other issues and other motions (and often required overlapping work). Examples include meeting and conferring regarding Mr. Floyd's status in the case and his outstanding discovery responses; preparation of discovery for Mr. Floyd not used, such as deposition preparation and additional discovery requests; and research in response to Plaintiffs' Motion to Withdraw. Amazon requests fees for 76.2 hours (\$57,896.50) expended by Sidley Austin, Mundel Decl. Ex. A, 12.5 hours (\$8,842.00) expended by Redgrave, Dugan Decl. Ex. A, and 15.2 hours (\$12,296.00) expended by DWT, Goldmark Decl. Ex. A.

Apple's Request

Apple has submitted declarations from the two firms representing it in this case: Weil, Gotshal & Manges LLP and Orrick, Herrington & Sutcliffe LLP.⁴ These firms worked together on the two motions at issue, with Weil taking the lead on behalf of both Defendants in briefing and at argument. *See* Perry Decl. at ¶ 7. The declarations submitted by counsel at each of these firms identifies the hours incurred on these two motions, based upon a review of each firm's contemporaneous time records. *See* Perry Decl. at ¶ 5; Parris Decl. at ¶¶ 4-5.

In connection with this fee request, Apple is seeking hourly rates for both firms consistent with the rates charged by Orrick, Herrington & Sutcliffe, Apple's local counsel in Washington. *See* Perry Decl. at ¶¶ 6-7; Parris Decl. at ¶¶ 6-16. These rates are further supported by the benchmarking analysis described in the Declaration of Brian Fanning as each hourly rate falls at or below the median for the Weil and Orrick attorneys' respective experience levels in the Puget Sound market area. *See* Fanning Decl. at ¶¶ 10, 12-20 (providing Puget Sound market area benchmarking statistics). As noted above, courts in this District have accepted similar rates as reasonable and appropriate in a wide variety of cases. *See, e.g., Wong*, 2022 WL 1092518, at *2; *Buich*, 11 Wash. App. 2d 1063, 2020 WL 60310, at *8-9 (2020). The rates requested also

⁴ Weil, Gotshal & Manges serves as lead counsel. Orrick, Herrington & Sutcliffe serves as Washington counsel.

align with the rates of similarly highly-qualified West Coast Counsel. *See, e.g., Staniksy*, 2022 WL 1801671, at *6; *infra* p. 4 (collecting cases).

Counsel for Apple exercised billing judgment in reviewing its records and is only seeking fees for time spent directly on the two Motions, corresponding replies, and the motion to compel hearing. Perry Decl. ¶ 7. Additionally, Weil was the primary drafter of the motion to compel briefing and presented argument on this issue at the hearing. *Id.* Apple requests fees for 239.3 hours (\$137,546.00) expended by Weil and 7.7 hours (\$6,455.00) expended by Orrick. Perry Decl. Ex. A; Parris Decl. Ex. A.

Conclusion

For the foregoing reasons, Defendants respectfully request that this Court grant their motion for attorneys' fees and costs.

DATED this 2nd day of May, 2025.

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12 *I certify that this memorandum contains 1,710*
13 *words, in compliance with the Local Civil Rules.*